

**Citicorp Industrial Credit, Inc.**

A Citibank Affiliate

399 Park Avenue  
New York, N.Y.  
10043



11403

RECORDATION NO. .... Filed 1425

JAN 22 1980 - 10 32 AM

INTERSTATE COMMERCE COMMISSION

January 17, 1980

No. **0-022A018**

Date **JAN 22 1980**

Fee \$ **50.00**

ICC Washington, D. C.

Secretary  
Interstate Commerce Commission  
Washington, DC 20523

Dear Sir:

Enclosed for recording please find the original and two copies of a duly executed and acknowledged guaranty between Naporano Iron and Metal, Co. (as Guarantor) and Citicorp Industrial Credit, Inc. (as Lender). Naporano Iron and Metal Co. is a New Jersey corporation having its principal place of business at Foot of Hawkins Street; P.O. Box 5304, Newark, New Jersey 07105. Citicorp Industrial Credit, Inc. is a Delaware corporation with its principal place of business at 399 Park Avenue, New York, New York 10043.

I have enclosed a check for \$50 to cover the recording fees. Please return the original document to me at the above address.

Very truly yours,

CITICORP INDUSTRIAL CREDIT, INC.

By: *Kenneth A. Raskin*  
Kenneth A. Raskin  
Counsel

*Handwritten signature: C. Daniel [unclear] - [unclear]*

*Stamp: RECEIVED JAN 22 1980*

=====11403=====

RECORDATION NO. .... Filed 1423

JAN 22 1980 - 10 AM

INTERSTATE COMMERCE COMMISSION

GUARANTY

Dated as of December 28, 1979

among

NAPORANO IRON AND METAL, CO.,

and

CITICORP INDUSTRIAL CREDIT, INC.

=====

(Covering 140 XF And XM Boxcars)

=====

Recordation No. \_\_\_\_\_

Filed and Recorded with the Interstate Commerce  
Commission pursuant to Section 11303 of Title 49 of the  
United States Code on \_\_\_\_\_ at \_\_\_\_\_.

GUARANTY dated as of December 28, 1979, between  
NAPORANO IRON & METAL, INC. (Guarantor") and CITICORP  
INDUSTRIAL CREDIT, INC. ("Lender").

W I T N E S S E T H :

WHEREAS, the Guarantor and Hillsdale County Railway  
Co., Inc. entered into a lease agreement dated as of February 1,  
1978 ("Hillsdale Lease"), wherein and whereby the Guarantor  
agreed to lease to Hillsdale and Hillsdale agreed to lease  
from the Guarantor seventeen (17) 40' rehabilitated XM  
boxcars and twenty-three (23) 50' rehabilitated XM boxcars  
(collectively, "Hillsdale Equipment"); and

WHEREAS, the Guarantor has assigned all of its right,  
title and interest in the Hillsdale Lease and Hillsdale  
Equipment to NIM Leasing Corp. ("Borrower"), pursuant to an  
assignment dated December 20, 1979 ("Hillsdale Assignment");  
and

WHEREAS, Hillsdale and Lender have entered into an  
Agreement of Subordination and No Set-Off by Lessee dated  
December 28, 1979 ("Subordination Agreement"); and

WHEREAS, the Guarantor and McHugh Brothers Heavy  
Hauling Company, Inc., Lessor and Operator of New Hope and  
Ivyland Railroad Company ("New Hope") entered into a lease  
agreement dated as of November 27, 1979, ("New Hope Lease"),  
wherein and whereby the Guarantor agreed to lease to New  
Hope and New Hope agreed to lease from the Guarantor up to  
two hundred (200) 50' rehabilitated XF boxcars ("New Hope  
Equipment"); and

WHEREAS, the Guarantor has assigned all of its right,  
title and interest in the New Hope Lease and New Hope  
Equipment to Borrower pursuant to an assignment dated  
December 20, 1979 ("New Hope Assignment"); and

WHEREAS, the Guarantor and Georgia-Pacific Corporation  
("GP") entered into an agreement dated the 19th day of  
October 1979 ("GP Use Agreement") wherein and whereby the  
Guarantor agreed to provide the New Hope Equipment to GP for  
its exclusive benefit and use pursuant to the terms and  
conditions thereof; and

WHEREAS, the Guarantor has assigned all of its right,  
title and interest in the GP Use Agreement to Borrower  
pursuant to an assignment dated December 20, 1979 ("GP  
Assignment"); and

WHEREAS, the Borrower wishes to borrow from the Lender and the Lender wishes to lend to the Borrower the principal sum of \$1,415,200 ("Loan") to be secured by collateral as set forth in a Mortgage between the Borrower and the Lender of even date herewith ("Mortgage") and subject to the terms and conditions therein contained; and

WHEREAS, the Guarantor desires to have the Lender make the Loan to the Borrower pursuant to the terms of the Mortgage, and the Lender is willing to make such Loan pursuant to the Mortgage upon the condition, among others, that the Guarantor execute and deliver this Guaranty.

NOW, THEREFORE, in consideration of the agreements of the Lender under the Mortgage and the premises hereof and thereof and other good and valuable consideration, the parties hereto agree as follows:

SECTION 1. Guaranty of Payment.

The Guarantor hereby irrevocably and unconditionally guarantees to the Lender the due and punctual payment of any shortfall in the "Car Hire Charges" (as defined in the Mortgage) generated by (a) the Hillsdale Equipment under the Hillsdale Lease up to 25% below the Breakeven Utilization; and (b) the New Hope Equipment up to 25% below the Breakeven Utilization. "Car Hire Charges" shall include, but shall not be limited to all rentals, mileage charges, per diem charges and incentive per diem charges due pursuant to the Hillsdale Lease, the New Hope Lease, the New Hope Consent and the GP Use Agreement. "Breakeven Utilization" shall be all Car Hire Charges sufficient to repay, when due, the Loan, including all interest, principal, premiums, if any, fees, expenses or any other sums due or to become due pursuant to the Mortgage and Promissory Note delivered therewith, or any substitute or replacement note therefor. Payment of all moneys due hereunder shall be due and payable when and as the same shall become due and payable (whether at stated maturity or by required prepayment or by declaration, acceleration or otherwise) pursuant to and in accordance with the terms of the Mortgage. This guaranty is an absolute, present and continuing guaranty of payment and not of collection and is in no way conditional or contingent upon any attempt to collect from the Borrower, or upon any other action, occurrence or circumstances whatsoever. In case the Borrower shall fail so to pay any such principal, interest or other amount, the Guarantor shall pay its obligations hereunder, in lawful money of the United States of America at the place specified in the Mortgage, together with

interest, at the rate applicable to overdue payments under the Mortgage, on any overdue principal (including any overdue prepayment of principal) and (to the extent permitted under applicable law) on any overdue installment of interest, and on any other overdue amount, from the date the same became due and payable to the date of payment.

SECTION 2. Guarantor's Obligations Absolute and Unconditional.

The obligations of the Guarantor hereunder shall be absolute and unconditional, irrespective of the validity, regularity or enforceability of the Mortgage or any other agreement referred to herein or therein, shall not be subject to any counterclaim, setoff, deduction or defense based upon any claim that the Guarantor may have against the Lender hereunder or otherwise, and shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected by any circumstances or condition whatsoever (whether or not the Guarantor shall have any knowledge or notice thereof), including, without limitation:

(a) any amendment or modification of or supplement to the Mortgage or any other agreement referred to herein or therein which does not modify in any material respect the obligations of the Guarantor hereunder or which the Guarantor has approved, in writing, or any assignment or transfer of any such agreements or of any interest therein, or any furnishing or acceptance of additional security, or any release of any security, for obligations of the Borrower under the Mortgage or otherwise;

(b) any waiver, consent, extension, indulgence or other action or inaction under or in respect of any such agreement or instrument, or any exercise or non-exercise of any right, remedy, power or privilege under or in respect of any such agreement or instrument or this Guaranty;

(c) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding with respect to the Borrower or its properties or its creditors;

(d) any merger or consolidation of the Borrower into or with any other corporation or any sale, lease or transfer of any or all of the assets of the Borrower for any reason to perform or comply with any of the terms of any other agreement with the Guarantor; or

(e) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. The Guarantor covenants that their obligations hereunder will not be discharged except by complete performance of the obligations guaranteed hereby.

The foregoing to the contrary notwithstanding, the parties hereto intend that the obligations of the Guarantor to the Lender by virtue of this Guarantee and of the Loan be limited as provided in Sections 1 and 12 of this Guarantee. Accordingly, the Lender agrees that it will not seek to recover from Guarantor, directly or indirectly, as a creditor in bankruptcy of the Borrower or otherwise any moneys in excess of those provided herein.

### SECTION 3. Waiver.

The Guarantor unconditionally waives (a) notice of any of the matters referred to in Section 2 hereof, (b) all notices which may be required by statute, rule of law or otherwise; other than those notices specifically required by the terms of this Guaranty or the Mortgage, to preserve any rights of the Lender against the Guarantor, including, without limitation, presentment to or demand of payment from the Borrower with respect to any amount due, notice to the Borrower of default or protest for nonpayment or dishonor, (c) any right to the enforcement, assertion or exercise by the Lender of any right, power or remedy conferred in the Mortgage and (d) any requirement of diligence on the part of the Lender.

### SECTION 4. Representations, Warranties and Agreements of the Guarantor.

(a) Representations and Warranties. The Guarantor represents and warrants that:

(1) Due Organization. It is a corporation duly organized and validly existing in good standing under the laws of the State of New Jersey and has the corporate power and authority to enter into the Hillsdale Lease, the New Hope Lease, the GP Use Agreement, the Hillsdale Assignment, the New Hope Assignment and the GP Use Assignment (collectively the "Agreements") at the time it entered into Agreements and has the corporate power and authority to enter into this Guaranty and has the corporate power and authority to perform its obligations under this Guaranty.

(2) Due Authorization and Enforceability. This Guaranty, the Agreements, and each of them have been duly authorized, executed and delivered by the Guarantor and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding obligations of it, enforceable in accordance with their respective terms

(3) No Violation. The execution and delivery by the Guarantor of this Guaranty, the Agreements, and each of them, are not, and the performance by it of its obligations under the Guaranty will not be, inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it and do not and will not contravene any provision of,

or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration with or the taking of any action in respect of or by, the Interstate Commerce Commission or any other Federal, state, local or Canadian governmental authority or agency, except such as have been obtained, given or accomplished.

(4) Title to the Equipment. Each Unit of Hillsdale Equipment and New Hope Equipment will be free and clear of all claims, liens, security interests and other encumbrances of any nature ("Liens") arising by, through or under the Guarantor other than the rights of Hillsdale under the Hillsdale Lease and the Subordination Agreement, New Hope under the New Hope Lease, GP under the GP Use Agreement and the rights of the Lender under the Mortgage, the Note and this Guaranty.

(5) Performance Will Not Create Liens. The performance by it of its obligations under this Guaranty will not subject the Hillsdale Equipment, the New Hope Equipment or the Agreements to any Lien (other than the Liens provided in the Mortgage and this Guaranty) under any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound.

(6) No Litigation. There are no actions, suits, proceedings or investigations pending, or to the knowledge of the Guarantor, threatened, before any court, regulatory commission, board or other governmental authority which question the validity of this Guaranty, the Mortgage or the Agreements, or any of them, or which might affect the ability of the Guarantor to perform its obligations hereunder or thereunder, or which might result, either individually or in the aggregate, in a material adverse change in the business, operations, affairs or conditions of the Guarantor, except as previously disclosed in writing to the Lender.

(7) Full Disclosure. There is no fact known to the Guarantor which materially adversely affects or in the future may (so far as the Guarantor can now foresee) materially adversely affect the business, operations, earnings, affairs, prospects or condition of the Guarantor or any of its properties or assets which has not been disclosed herein or in the other documents, certificates and statements furnished to the Lender in writing specifically for use in connection with the transactions contemplated by the Mortgage.

(b) Agreements. The Guarantor agrees and covenants that:

(1) Delivery of Certificate. On the Closing Date, as defined in the Mortgage, the Guarantor shall deliver to the Lender a certificate to the effect that the representations and warranties of the Guarantor set forth in

87 this Guaranty are true and correct in all material respects on and as of such Closing Date with the same effect as though made on and as of such Closing Date, and that no action or inaction by the Guarantor which shall or may have a material adverse effect on the revenues generated by the Hillsdale Equipment and/or the New Hope Equipment shall have occurred and be continuing on such Closing Date.

(2) Delivery of Opinion. On the Closing Date, the Guarantor shall deliver to the Lender a favorable opinion of counsel, dated the Closing Date, to the effect set forth in subparagraphs (1) through (6) of paragraph (a) of this Section, which opinion may be subject to the qualifications set forth in paragraph (b) of Section 11 of the Mortgage.

#### SECTION 5. Covenants of the Guarantor.

The Guarantor hereby covenants and agrees that so long as any amount, the payment of which is guaranteed hereby, is unpaid and outstanding:

(a) Except as set forth in paragraph (b) of this Section, the Guarantor shall keep in full force and effect its existence as a corporation, its good standing as a duly qualified or licensed foreign corporation authorized to do business in each jurisdiction where the conduct of its business requires such qualification, and such of its other rights and franchises as are necessary or desirable for the advantageous conduct of its business.

(b) The Guarantor shall not consolidate with any other corporation or merge into any other corporation or sell or otherwise transfer all or substantially all of its property and assets to any other corporation (any such corporation resulting from such consolidation or into which the Guarantor shall have been merged or to which such sale or other transfer shall have been made being herein called the "Successor Corporation"), unless:

(i) the Successor Corporation shall be a corporation incorporated under the laws of any state of the United States of America;

(ii) the Successor Corporation shall expressly assume the due and punctual performance of all the obligations and liabilities of the Guarantor under this Guaranty and shall consent and agree in writing (by an instrument in form and substance satisfactory to the Lender) to assume and perform all of the obligations and liabilities of its predecessor corporation hereunder; provided, however, that no such sale or other transfer shall release the Guarantor from any of its obligations or liabilities under this Guaranty and the predecessor corporation shall remain liable, severally but not jointly, with the Successor Corporation;



(iii) the Successor Corporation shall not immediately thereafter be in breach of any provision of this Guaranty;

(iv) the Lender shall consent to such consolidation, merger or transfer of assets, which consent shall not be unreasonably withheld.

(c) The Guarantor shall duly pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges levied upon it or against its properties or assets or any of its franchises, business, income or profits by any Federal, state or local government or taxing authority in the United States prior to the date on which any penalty or interest accrues thereon, unless and to the extent that such tax, assessment or charge shall be contested in good faith and by appropriate proceedings by the Guarantor.

(d) In the event that the Guarantor pays to the Lender amounts the payment of which is guaranteed hereunder, the Guarantor shall, in writing at the time of the payment, identify the source and application of such payment.

#### SECTION 6 Purchase Option.

Within 30 days after the Lender gives written notice of any termination of the Hillsdale Lease, the New Hope Lease or the GP Use Agreement pursuant to clause (2) of Section 21(a) of the Mortgage, or any declaration of the unpaid principal balance of the Loan due and payable pursuant to clause (1) of Section 21(a), the Guarantor may, upon not less than 5 days prior written notice to the Lender, purchase the Lender's rights and interest in, to and under the Mortgage for an amount equal to the unpaid principal balance of the Loan as of the date of such purchase plus accrued interest to, but not including, such date plus any other amounts then due and owing the Lender under the Mortgage. Upon due payment to the Lender of the amount owing pursuant to this paragraph, the Lender shall transfer to the purchasing party (without representations or warranties) the Note then outstanding and all of its rights (except those to indemnification for losses, damages, injuries, liabilities, claims and demands, and expenses in connection therewith, which may be suffered or incurred by the Lender) in, to and under the Mortgage.

#### SECTION 7. Cure Rights.

The failure of the Borrower to make payment of any amount due under the Mortgage shall not constitute an Event of Default under subparagraph (2) of paragraph (a) of Section 21 of the Mortgage if the Guarantor pays to the Lender the full amount due hereunder within 10 days after the Lender gives notice of such failure of the Borrower to make payment pursuant to the Mortgage and such payment by

Guarantor is made in compliance with all of the terms and provisions of the Mortgage and this Guaranty.

SECTION 8. Remedies.

In case the Guarantor shall fail forthwith to pay upon demand of the Lender any amounts due pursuant to the provisions hereof, the Lender shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree against the Guarantor for the full amount due or to become due and collect in the manner provided by law out of the property of the Guarantor, wherever situated, the monies adjudged or decreed to be payable.

SECTION 9. Subrogation.

Upon payment in full of all amounts owing to the Lender pursuant to the Mortgage, the Guarantor shall be subrogated to the rights of the Lender under the Mortgage to receive payments and distributions thereunder until it shall have been paid in full an amount equal to the aggregate of all sums paid by it pursuant to this Guaranty.

SECTION 10. Consent to Prepayment, Loan and Assignment.

The Guarantor hereby consents, notwithstanding any of the terms or provisions of the Agreements, or any of them, which may be to the contrary, to all of the terms and provisions of the Mortgage and to the transactions contemplated thereby, including, but not limited to, the mortgage of and grant of a security interest to the Lender in the Collateral, as defined in the Mortgage.

SECTION 11. Assignment of Mortgage by the Lender.

The Lender may assign, without the consent of the Borrower, the Guarantor or any other party, any or all of its rights and obligations in, to and under the Agreements, or any of them, the Subordination Agreement, the Note and the Mortgage. In the event of any such assignment and upon written notice to the Borrower, the Guarantor, Hillsdale, New Hope and GP, the Lender's assignee shall, to the extent of such assignment, be entitled to the benefits of, and to receive and enforce performance of, all of the covenants and agreements to be performed (a) by the Borrower under the Mortgage and the Note as though the Lender's assignee were named therein as the Lender, (b) by GP under the GP Use Agreement, and (c) by Hillsdale and New Hope under the Hillsdale Lease, the Subordination Agreement and the

New Hope Lease, respectively; and be subject to all of the duties and obligations of the Lender hereunder.

SECTION 12. Costs and Expenses.

The Guarantor shall pay all costs and expenses (including, without limitation, attorneys' fees and expenses) reasonably incurred by or on behalf of the Lender in enforcing the obligations of the Guarantor under this Guaranty.

SECTION 13. Amendments.

The terms of this Guaranty may not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by each of the parties hereto, or their successors and assigns.

SECTION 14. Successors and Assigns.

This Guaranty shall be binding upon the parties hereto and inure to the benefit of such parties and, to the extent permitted hereby, their respective successors and assigns. The Lender, or any assignee of the Lender may assign its right, title and interest in, to and under this Guaranty without the consent of the Guarantor. No assignment of this Guaranty shall increase the obligation to any assignee except upon written notice of such assignment. The rights and obligations of the Guarantor hereunder shall not be assignable except pursuant to the provisions of Section 5 hereof.

SECTION 15. Survival of Agreements.

All agreements, representations and warranties of the Guarantor contained herein or made in writing by the Guarantor in connection with the transactions contemplated hereby shall survive the execution and delivery of this Guaranty and shall continue in effect as long as any obligations of the Borrower under the Mortgage are unpaid and outstanding.

SECTION 16. Notices.

Any notice required or permitted to be given by either party hereunder shall be deemed to have been given when deposited in the United States mail, first class postage prepaid, and addressed (a) if to the Guarantor, to P.O. Box 5304, Newark, New Jersey 07105 and (b) if to the Lender, to 399 Park Avenue, New York, New York 10043, Attention: Manager, Contract Administration, or to such other address as each such party shall hereafter furnish to the other party in writing.

SECTION 17. Choice of Forum.

The Guarantor and the Lender each, to the fullest extent permitted by law, (a) designates the United States District Court of the Southern District of New York, as a forum where any and all matters pertaining to this Guaranty may be adjudicated, and (b) by the foregoing designation, consents to the jurisdiction and venue of such Court for the purpose of adjudicating any and all matters pertaining to this Guaranty. Each party hereto not having an agent for service of process of record with the Secretary of State of the State of New York hereby irrevocably appoints the Secretary of State of the State of New York as the agent for service of process in any proceeding instituted hereunder and each party hereto agrees that service of process upon such agent, in accordance with the then-prevailing and applicable law as hereinabove agreed to, with a copy of such summons or other instrument mailed to such party by United States registered mail at the address specified in Section 16 hereof, shall, upon receipt by such party, constitute proper service on such party for all purposes without objections of any kind whatsoever. Notwithstanding the provisions of this paragraph, any party hereto shall also be entitled to institute legal proceedings to adjudicate matters pertaining to this Guaranty against the other in any other competent court.

SECTION 18. Miscellaneous.

(a) Execution. This Guaranty may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which, when so executed and delivered, shall constitute a single instrument, but the counterpart or counterpart set, which shall be marked "Original", delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Lender shall be deemed the original counterpart and all other counterparts hereof shall be deemed duplicates thereof and shall be marked "Duplicate". Although this Guaranty is dated as of the date first above written for convenience, the actual dates of the execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto.

(b) Governing Law. This Guaranty shall be construed in accordance with and governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303, such additional rights arising out of the filing, recording, registering, or depositing of this Guaranty and any rights arising out of the marking on the Units of the Equipment, as such terms are defined in the Mortgage.

(c) Headings. The headings in this Guaranty are for the purposes of reference only and shall not limit or define the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Guaranty to be executed by their respective duly authorized officers on the respective dates set forth below.

NAPORANO IRON AND METAL  
CO.

By Joseph Naporano

Title: President

Date: 1/17/80

Attest:

[Seal]

*[Handwritten signature]*  
Sec.


CITICORP INDUSTRIAL CREDIT,  
INC.

By *W. J. [unclear]*  
Title: *Vice President*  
Date: *11/18/80*

Attest:

*Kenneth A. Ross*

[Seal]



State of New <sup>Jersey</sup> ~~York~~ )  
County of <sup>ESSEX</sup> ~~New York~~ ) ss.:

On this 17 day of January 1980 before me personally appeared Joseph Naporano, to me personally known, who being by me duly sworn, says that he the President of Naporano Iron And Metal Co., that the seal affixed to the foregoing instrument is the true corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of said foregoing instrument was the free act and deed of said corporation.

Robert D. McAndrew  
Notary Public  
Attorney at Law  
State of New Jersey

[Notarial Seal]

State of New York )  
County of Bergen ) ss.:  
Jersey  
New York

On this 17<sup>th</sup> day of January 1980 before me personally appeared W.G. Wender, to me personally known, who being by me duly sworn, says that he a Vice President of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the true corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



[Notarial Seal]

Nancy Arribi  
Notary Public

NANCY ARRIBI  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES JULY 20, 1983